IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 30716 of 2006(F)

OS.64/2002 of MUNI-MAGI.COURT, PERAMBARA

.....

PETITIONERS:

---

1. PUTHENPURAYIL LEELAMMA MATHEW,
   CHANGAROTH AMSOM, AVADUKKA DESOM,
   P.O.CHANGAROTH, KOYILANDY TALUK,
   KOZHIKODE DISTRICT, KERALA STATE.

2. PUTHENPURAKKAL SAJEESH KOSI,
   CHANGAROTH AMSOM, AVADUKKA DESOM, P.O.CHANGAROTH,
   KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.P.P.JACOB
SRI.B.MANIMOHAN
SRI.N.T.SATHYAVAN

RESPONDENTS:

---

1. PUTHENPURAKKAL KUNHANCHAN & P.C.KURIAN,
   CHANGAROTH AMSOM, AVADUKKA DESOM,
   P.O.CHANGAROTH, KOYILANDY TALUK,
   KOZHIKODE DISTRICT, KERALA STATE.

2. ELIKUTTY,
   SWASTHAM, RESIDING AT POOKKOOTTVEETTIL,
   NENMENI VILLAGE, AMBUKUTHI DESOM,
   P.O.THOMARIMALA, BATHERI TALUK.

3. KANNADIKKALVEETTIL SHEENASHIJU,
   SWASTHAM, PADICHIRA VILLAGE, ADIKKOLLY DESOM,
   P.O.AMARAKKUNI, ADIKKOLLY, BATHERI TALUK.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF SKETCH PRODUCED ALONG WITH COMMISSION REPORT IN I.A.251/02 IN O.S.64/02 OF PERAMBRA MUNSIFF MAGISTRATE COURT DATED 15.2.02.

EXT.P2: TRUE COPY OF R.S. SKETCH IN SY.NO.76 OF AVADUKKA VILLAGE.

EXT.P3: TRUE COPY OF I.A.974/04 IN O.S.64/02 OF PERAMBRA MUNSIFF MAGISTRATE COURT ALONG WITH ORDER DATED 16.12.2004.

EXT.P4; TRUE COPY OF LETTER ISSUED BY TAHSILDAR, QUILANDI TO THE VILLAGE OFFICER, CHNGAROTH.

EXT.P5: TRUE COPY OF COMMUNICATION OF THE VILLAGE OFFICER DATED 11.2.05.

EXT.P6: TRUE PHOTOCOPY OF COMMISSION REPORT WITH THE SKETCH SUBMITED IN I.A.251/02 DATED 13.1.04.

EXT.P7: TRUE COPY OF I.A.680/06 IN O.S.64/02 OF MUNSIFF MAGISTRATE COURT, PERAMBRA DATED 13.11.2006.

EXT.P8: TRUE COPY OF I.A.679/06 IN O.S.64/02 OF MUNSIFF MAGISTRATE COURT, PERAMBRA DATED 13.11.2006.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.30716 OF 2006

DATED THIS THE 23rd DAY OF JANUARY, 2007

JUDGMENT

Petitioners are plaintiffs in O.S.64/02 on the file of Munsiff Court, Perambra. Petitioners filed I.A.680/06, an application under Rule 120 of Civil Rules of Practice to call for a document from Tahsildar, which was dismissed under Ext.P7 order. Petitioner also filed I.A.679/06, an application under Order VI Rule 17 of Code of Civil Procedure to amend the plaint. Under Ext.P8 order, the said petition was also dismissed. This petition is filed under Article 227 of Constitution of India challenging Exts.P7 and P8 orders.

2. Learned Counsel appearing for petitioners argued that petitioners produced the photocopy of the plan and its original was sought to be produced by filing I.A.680/06. Inspite of the order passed by the Court, Revenue authorities did not issue the certified copy and therefore learned Munsiff should have allowed the application.

3. Learned Counsel also argued that by filing the amendment application, petitioners sought to correct the survey number shown in the plaint and in the circumstances of the case, learned Munsiff should

not have rejected the application and therefore Ext.P8 order is to be quashed.

4. Learned Counsel appearing for respondents pointed out that petitioners were proceeding through out on the basis that survey number shown in the plaint is the correct survey number and evidence was also let in and in spite of the report submitted by Commissioner, petitioners did not file an application to amend the plaint before examination of the parties and the application was filed only after closing of the evidence and in such circumstances, there is no reason to interfere with Ext.P8 order in exercise of the extraordinary jurisdiction of this Court. Learned Counsel also pointed out that for the very same relief sought for in I.A.680/06, petitioners earlier filed I.A.175/06 and it was dismissed and so petitioners are not entitled to file an identical petition and therefore there is no reason to interfere with Ext.P7 order also.

5. On hearing learned Counsel appearing for petitioners and respondents, I find that for the purpose of a just decision of the case, learned Munsiff should have permitted petitioners to amend the plaint as sought for in I.A.679/06. The question whether petitioners have a right over the property in the survey number sought to be amended, is a matter to be decided by learned Munsiff on the evidence. By permitting to amend the survey number, plaint schedule property is not being changed as neither the other

descriptions of the property or its boundaries changed. In such circumstances, Ext.P8 order is quashed. I.A.679/06 filed by plaintiffs stands allowed. Respondents/defendants are entitled to file an additional written statement raising all available contentions including the right of petitioners to the property comprised in the amended survey number.

6. When I.A.175/06, which was filed for the very same relief was dismissed by the Court earlier, petitioners are not entitled to file another application seeking the very same relief. Therefore I find no reason to interfere with Ext.P7 order dismissing I.A. 680/06.

Writ petition is disposed accordingly. Learned Munsiff is directed to dispose the suit expeditiously.

M.SASIDHARAN NAMBIAR,JUDGE

Acd